

W

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/005,677	SPINDLER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	N. Bhat	1764	

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**  
All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Terminal Disclaimer of September 16, IDS of 8-16 and Arguments of 7-19-2004.
2. ☒ The allowed claim(s) is/are 1-5.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

**Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>3 IDS attached</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                                     | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.  |

Art Unit: 1764

1. Claims 1-2 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 3-5, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, Claims 3-5 are now subject to being rejoined. Process claims 3-5 have been hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claims 6-7, not directed to the process of making or using the patentable product, will not be rejoined.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. McGowan on September 17, 2004.

The application has been amended as follows:

In the Title:

After "Compositions", delete ",", and insert --and--; delete "and apparatus"

In the Claims:

Cancel claims 6-7 non-elected without prejudice.

3. The following is an examiner's statement of reasons for allowance:

The invention relates to a cold extruded composition comprising a fat phase having an overrun of at 90%, wherein at least 45% w/w of the fat phase is liquid at -5°C. A process and apparatus for preparing the cold extruded ice cream composition is

Art Unit: 1764

claims which provides a freezer barrel for aerating a mix comprising a fat phase in a freezer barrel enclosing an internal volume, the internal volume comprising aeration means which displaces less than 40% of the internal volume of the freezer barrel and out flow means, wherein after the composition is aerated the mixed is extruded through a cold extruding means wherein the aeration means displaces less than 40% of the internal volume and at least 45% w/w of the fat phase is liquid at -5°C. The prior art fails to teach and or suggest a cold extruded ice cream composition, which has an overrun of at least 90% and wherein 45% w/w of the fat phase is liquid at -5°C. The prior art fails to recognize that cold extrusion of a composition which has a high proportion of fat which is liquid at -5°C has poorer aeration and there is difficulty in providing an overrun of at least 90% when the fat is liquid as the liquid fat provides a less stable emulsion than would a solid fat and the present invention solves the problem of aeration by providing aerating means that displaces less than 40% of the internal volume of the freezer barrel, thereby superseding the prior art's method, apparatus and composition.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

Art Unit: 1764

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



N. Bhat  
Primary Examiner  
Art Unit 1764